

ALEXANDER KUGELMAN (SBN 255463)
alex@kugelmanlaw.com
Kugelman Law, P.C.
700 Larkspur Landing Cir., Suite 109
Larkspur, CA 94939
Telephone: (415) 548-1125
Facsimile: (415) 534-9441

Attorney for Petitioner

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ASSOCIATED SYSTEM APPLICATION
PROFESSIONALS, INC.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Case No. 3:20-cv-7787

PETITION TO QUASH SUMMONSES

**RE: SIXTEEN (16) SUMMONSES
ISSUED BY THE INTERNAL
REVENUE SERVICE**

Hearing: To be Determined

Petitioner Associated System Application Professionals, Inc. hereby petitions this Court, pursuant to 26 U.S.C. § 7609(b), for an order quashing each of the sixteen (16) third-party Summonses issued by the Internal Revenue Service, and in support thereof allege as follows:

THE PARTIES

1. Petitioner Associated System Application Professionals, Inc. (“ASAP” or “Petitioner”) is a California corporation with its principal office located at 2301 S. El Camino Real, San Mateo, California 94403.

2. Respondent is the United States of America, which has acted through its agency, the Internal Revenue Service (“IRS”), which has offices throughout the Northern District of California, and more specifically with an Internal Revenue Service office located at 55 South Market Street, San Jose, California 95113.

JURISDICTION AND VENUE

3. This Court has jurisdiction to hear this Petition pursuant to the provisions of 26 U.S.C. § 7609(h) and 28 U.S.C. § 1331.

1 13. On October 27, 2020, attorney Mindy S. Meigs spoke to Revenue Agent Oertel's
2 supervisor, Nicholas Connors, who stated that the audit concerning Mr. Sturman was opened as a
3 result of a referral from the IRS Collection Division.

4 14. ASAP and several other corporations owned by Mr. Sturman have unpaid Federal
5 payroll liabilities (penalties and interest, not tax) for quarters in 2009, 2010 and 2011.

6 15. ASAP has no unpaid federal tax liabilities of any kind for years 2017 and 2018.

7
8 **THE SUMMONSES AND NOTICE**

9 16. Revenue Agent Oertel issued a Summons (IRS Form 2039), dated October 15, 2020,
10 to each of the twelve (12) parties identified below, requiring production of records on November
11 12, 2020. A copy of each Summons, as redacted, is attached as **Exhibit A**.

12 First Data Merchant Services
13 U.S. Bank National Association
14 Summit Bank
15 Umpqua Bank
16 Westamerica Bank
17 Poloniex
18 Payward, Inc. dba Kraken
19 Paxos Trust Company
20 Gemini Trust Company, LLC
21 Genesis Trading
22 Coinbase, Inc.
23 Circle Internet Financial, Inc.

24 17. Revenue Agent Oertel issued a Summons (IRS Form 2039), dated October 16, 2020,
25 to each of the four (4) parties identified below, requiring production of records on November 13,
26 2020. A copy of each Summons, as redacted, is attached as **Exhibit B**.

27 Bulbul Investments LLC
28 Bittrex, Inc.
PayPal Holdings, Inc.
eBay, Inc.

18. Revenue Agent Oertel did not contact ASAP or Mr. Sturman prior to issuing the
Summonses identified above.

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19. The Summons issued to Bittrex, Inc., Bulbul Investments, LLC, Circle Internet Financial, Inc., Coinbase, Inc., Gemini Trust Company, LLC, Genesis Trading, Paxos Trust Company, Payward, Inc. dba Kraken, and Polinex (“cryptocurrency Summonses”), request documents for the following period:

The following requests apply to the period or periods beginning with the inception of any Covered Account through December 31, 2018.

20. The Summons issued to First Data Merchant Services, U.S. Bank National Association, Summit Bank, Westamerica Bank, PayPal Holdings, Inc., and eBay, Inc. request “ALL documents” relating to “[ASAP],..., and all of their entities and businesses” for the period described as “tax years ended December 31, 2017 and December 31, 2018.” The cryptocurrency Summonses require production of all records related to the “taxpayer” which is defined as all “entities” over which ASAP “exercises and/or exercised control, including but not limited corporations, partnerships....”

21. Notice of the Summonses identified in paragraph 22, above, has not been given to any of the “entities and businesses.”

THE SUMMONSES SHOULD BE QUASHED

22. Congress has mandated that “[n]o taxpayer shall be subjected to unnecessary examination or investigations, and only one inspection of a taxpayer’s books of account shall be made for each taxable year unless ... the Secretary, after investigation, notifies the taxpayer in writing that an additional inspection is necessary.” 26 U.S.C. § 7605(b).

23. In *United States v. Powell*, 379 U.S. 48 (1964), the Supreme Court held that when a party petitions to quash an IRS summons, the IRS must make a prima facie showing that the summons was issued in good faith. *Id.* at 57–58. Specifically, the IRS must establish that the summons (1) was issued pursuant to a “legitimate purpose”; (2) seeks information “relevant” to that purpose; (3) seeks information that is “not already within the Commissioner’s possession”; and (4) satisfies all “administrative steps required by the Code. *Id.*

24. The taxpayer ‘may challenge the summons on any appropriate grounds,’ including failure to satisfy the Powell requirements or abuse of the court’s process.” *Id.* (quoting *Reisman*

1 *v. Caplin*, 375 U.S. 440, 449 (1964)). "Such an abuse would take place if the summons had been
2 issued for an improper purpose, such as to harass the taxpayer or to put pressure on him to settle
3 a collateral dispute, or for any other purpose reflecting on the good faith of the particular
4 investigation." *Powell*, 379 U.S. at 58.

5 25. The Summonses at issue in this Petition should be quashed because they (a) were
6 issued in bad faith, (b) were not issued for a legitimate purpose, (c) the records sought are not
7 relevant, and (d) the IRS did not comply with all administrative procedures before issuing the
8 Summonses:

9 **a. The Summonses Were Issued in Bad Faith**

10 The Summonses were issued for the purpose of retaliating against and harassing
11 Petitioner and its shareholder.

12 More than 40 years ago, the Supreme Court stated that the duty of the District Court
13 with respect to an IRS summons was "to see that a legitimate investigation was being conducted
14 and that the summons was no broader than necessary to achieve its purpose." *United States v.*
15 *Bisceglia*, 420 U.S. 141, 146 (1975). The Supreme Court expounded on the District Court's role
16 by stating, "[o]nce a summons is challenged it must be scrutinized by a court to determine
17 whether it seeks information relevant to a legitimate investigative purpose and is not meant 'to
18 harass the taxpayer or to put pressure on him to settle a collateral dispute, or for any other
19 purpose reflecting on the good faith of the particular investigation.'" *Id.* at 151 (citing *Powell*,
20 379 U.S. at 58).

21 An enforcement proceeding is not a judicial "rubberstamp" of an IRS summons.
22 Rather, the District Court must conduct its own independent review of the evidence to ensure
23 that the IRS is not overreaching, engaging in harassment, acting in bad faith, or otherwise
24 attempting to abuse the summons power or the process of the court. *See Powell*, 379 U.S. at 58.
25 Courts "recognize that the authority vested in tax collectors may be abused, as all power is
26 subject to abuse." *United States v. Bisceglia*, 420 U.S. 141, 146 (1975). Thus, the IRS may not
27 issue a summons "to conduct 'fishing expeditions' into the private affairs of taxpayers." *Id.* at
28 150-51.

1 The Summonses here have been issued under the guise of an audit that does not exist.
2 The IRS did not put the taxpayer on notice of the audit or of its intention to contact third parties.
3 This is improper and shows bad faith, especially where, as here, there are indications that the IRS
4 is retaliating against Petitioner and/or harassing Petitioner for failing to pay penalties and interest
5 related to payroll taxes. Further, the IRS has no evidence that Petitioner utilizes or is involved
6 with cryptocurrency, yet the IRS issued a Summons to nine cryptocurrency exchanges. Because
7 there is no evidence to support even a suspicion of a violation of the Internal Revenue Code,
8 these Summonses were issued on the mere hope of finding something nefarious. This is the
9 definition of a fishing expedition and it should be stopped.

10 **b. The Summonses Were Not Issued for a Legitimate Purpose**

11 Pursuant to 26 U.S.C. § 7602, the IRS may issue a Summons for the purposes of
12 “ascertaining the correctness of any return, making a return where none has been made,
13 determining the liability of any person for any internal revenue tax or ... collecting any such
14 liability.” 26 U.S.C. § 7602(a). ASAP timely filed its 2017 and 2018 income tax returns, there
15 is no pending audit of those returns, and ASAP has no outstanding tax liabilities for 2017 and
16 2018. Therefore, the Summonses here were not issued for a legitimate purpose because none of
17 the purposes listed in 26 U.S.C. § 7602(a) are present in this case.

18 **c. Records Sought are Not Relevant to a Legitimate Purpose**

19 Even if this Court finds that the Summonses were issued to determine ASAP’s
20 income tax liability for 2017 and 2018, the Summonses seek information that is not relevant to
21 this purpose because (i) they seek records for unspecified periods prior to 2018, (ii) seek records
22 of other taxpayers, and (iii) the records sought are not described with reasonable certainty as
23 required by 26 U.S.C. § 7603(a).

24 The nine Summonses issued to cryptocurrency exchanges, including Coinbase, Inc.
25 and Bittrex, Inc., seek account records from the inception of the covered account(s) through
26 December 31, 2018. Therefore, the cryptocurrency Summonses are overbroad with respect to
27 time.

28 All of the Summonses are vague and overbroad in that they seek records related to

1 parties other than ASAP. The Summonses seek “ALL documents” regardless of the nature, type
2 and relevance to an audit. The Summonses seek records for a period identified as “tax years
3 ended December 31, 2017 and December 31, 2018.” Tax year is not defined in the Summonses.
4 A tax year is not necessarily the same as a calendar year. Moreover, the Summonses seek
5 records related to “all of their entities and businesses” or all entities ASAP might control which
6 are not identified by name and could erroneously result in the summoned third-parties producing
7 records related to other corporations owned by Mr. Sturman or records concerning taxpayers that
8 ASAP has a controlling interest in.

9 Because the time periods are overbroad, and the records sought are not described
10 with reasonable certainty or relate to other taxpayers, the Summonses seek records that are not
11 relevant.

12 **d. IRS Failed to Comply with Internal Revenue Code Procedures**

13 The IRS failed to comply with the Internal Revenue Code in issuing and serving the
14 Summonses at issue. Specifically, the IRS did not (i) give ASAP notice of third-party contacts
15 prior to issuing the Summonses as required by 26 U.S.C. § 7602(c)(1), and (ii) give notice of the
16 Summonses as required by 26 U.S.C. § 7609(a)(1).

17 Pursuant to 26 U.S.C. § 7602(c)(1), which was significantly modified by section
18 1206 of the Taxpayer First Act of 2019, the IRS is required, subject to exceptions not relevant
19 here, to provide taxpayers with notice in advance of third-party contacts. Notice must be given
20 at least 45 days before the third-party contact and is valid for one year. 26 U.S.C. § 7602(c)(1).
21 Service of a Summons constitutes contact with a third-party. *See* 26 C.F.R. § 7602-2(e)(4),
22 Example 4. Since Revenue Agent Oertel did not send ASAP a notice advising he would be
23 contacting third parties before he served the Summonses at issue, the Summonses must be
24 quashed.

25 Pursuant to 26 U.S.C. § 7609(a)(1), notice of a third-party Summons is required to be
26 given to the persons identified in the summons (other than the summoned person) by certified or
27 registered mail within three (3) days after the summons is served, but no later than the 23rd day
28 before the day fixed in the summons as the day upon which such records are to be examined.

IRS has not properly served ASAP and the “entities” and “businesses” referenced in Summonses with notice of the Summons within the time period set forth in 26 U.S.C. § 7609(a)(1).

REQUEST FOR EVIDENTIARY HEARING AND DISCOVERY

26. A party who alleges facts from which an improper purpose for issuance of a summons can be inferred is entitled to an evidentiary hearing and an opportunity to question the party that issued the summons. *United States v. Clarke*, 573 U.S. 248 (2014). Because an improper purpose can be inferred from the facts alleged in paragraphs 1 through 25(a)-(d)., above, Petitioner is entitled to an evidentiary hearing in this case.

PRAYER FOR RELIEF

WHEREFORE, Petitioner Associated System Application Professionals, Inc. prays as follows:

- a) That this Court quash the Summonses identified in paragraphs 18 and 19, above;
- b) That this Court grant Petitioner costs plus such other and further relief as may be just and proper.

Respectfully submitted,

Dated: November 4, 2020

By: /s/Alexander Kugelman

Alexander Kugelman (SBN 255463)
KUGELMAN LAW, P.C.
700 Larkspur Landing Cir., Suite 109
Larkspur, CA 94939
Telephone: (415) 548-1125
Facsimile: (415) 534-9441
Email: alex@kugelmanlaw.com

Attorney for Associated System
Application Professionals, Inc.